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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,110	02/17/2004	Duane D. Blatter	11502/34	6495
7590 STOEL RIVES LLP One Utah Center Suite 1100 201 South Main Street Salt Lake City, UT 84111		03/04/2010	EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 03/04/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,110	<b>Applicant(s)</b> BLATTER ET AL.
	<b>Examiner</b> DIANE YABUT	<b>Art Unit</b> 3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 December 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-59 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-59 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to applicant's amendment received on 12/08/2009.

The examiner acknowledges the amendments made to the claims.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-13, 15-16, 18-37, 39-48, and 50-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniel (U.S. Patent No. 4,523,592) in view of Huxel et al. (U.S. Patent No. 6,503,259).

Daniel discloses a vascular anastomosis device including first and second rings 10 or 10' having holding surfaces or tabs extending from segments that define ring openings that are configured to hold first V and second V' vessels together without requiring penetration of the second vessel (Figures 1-7), wherein the rings are configured to be structurally linked by guides 26 that provide guided coaxial movement of the rings relative to each other. The first ring holds an end of a first vessel V defining a first vessel opening and the second ring holds a portion of a second vessel V' defining a second vessel opening of the second vessel. Locking means separate from the holding surfaces, such as legs with guides or slots 28 which frictionally engage legs with guideposts or locking extensions 25 for locking the first ring and the second ring

together in an interdigitated configuration are disclosed, which guide the movement of one ring relative to the other. The rings capture tissue in an everted configuration or adventitial surfaces of vessels, wherein no portion of the first ring is within a lumen of the first vessel (Figure 7).

Daniel does not expressly disclose the rings being configured to expand and contract or having flexible segments. Daniel also discloses the rings being urged together, but does not expressly disclose an attachment actuation means. In addition, Daniel lacks an anchor on the holding means for securing the vessels.

Huxel et al. teach vessel anastomosis rings **12** and **14** with flexible, circular shaped segments **30** and **18** being configured to expand and contract to enable each respective vessel opening to change in diameter in unison when first and second vessels are anastomosed, moving from a compressed or initial position to a deployed or expanded position, and may expand and contract afterwards (Figures 1 and 8, col. 4, lines 8-11 and col. 4, line 64 to col. 5, line 10). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the rings of Daniel to be expandable and contractable, as taught by Huxel et al., in order to maintain the connection between the rings and the tissue, as well as to permit peristalsis (see abstract).

Huxel et al. also teach an attachment actuation means **38** for locking together anastomosis rings (Figures 5-7). It would have been obvious to one of ordinary skill in the art at the time of invention to provide an attachment actuation means, as taught by

Huxel et al., to Daniel to facilitate aligning and urging together the rings for effective locking and anastomosis of the vessels.

An anchor means **16** in Huxel et al. (Figure 8) also aids the device in securing holding surfaces of the rings together. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the holding surfaces of Daniel by including an anchor means, as taught by Huxel et al., in order to secure the anastomosis while also acting as force distributor and moderator (col. 4, lines 50-53).

3. Claims 14, 17, 38, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Daniel** (U.S. Patent No. **4,523,592**) in view of **Huxel et al.** (U.S. Patent No. **6,503,259**), as applied to claims 13, 37, and 48 above, and further in view of **Spence et al.** (U.S. Patent No. **5,868,763**).

Daniel and Huxel et al. disclose the claimed invention except for each flexible segment comprises two adjoining arms in a V-shaped configuration and is adjoined to an adjacent flexible segment by a connecting joint, wherein each flexible segment of each ring comprises a flexible segment joint, wherein the holding tabs of the first ring extend from the connecting joints, and the holding tabs of the second ring extend from the flexible segment joints.

Spence et al. teach flexible segments **50** having two adjoining arms in a V-shaped configuration which have flexible segment joints **52** and are connected to adjacent segments by connecting joints wherein holding tabs **101** and **102** extend from the joints (Figure 19). It would have been obvious to one of ordinary skill in the art at

the time of invention to provide a V-shaped flexible segment with connecting and segment joints to the flexible segments, as taught by Spence, to Daniel and Huxel et al. since a V-shape is old and well known in the art as a framework that act as hinges to facilitate radial expansion and contraction.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-59 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734